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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

Petition not printed.

No. 485

GEORGE CORNELIUS MOORE AND LESTER HAUGHTON,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent

BRIEF FOR PETITIONERS

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I

The Opinions of the Courts Below

The trial Court rendered no opinion.

The Court of Appeals of the State of New York affirmed the judgment of conviction in the Bronx County Court rendering no opinion.

The defendants argued in the Court of Appeals and included in their brief the points that the decision of the trial Court in granting the motion of the People for a special jury and in overruling the challenges of the defendants to the special jury panel constituted a denial of due process

and a violation of their rights under the Fourteenth Amendment of the Constitution of the United States.

II

Jurisdiction

The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended (28 U. S. C. A. Sec. 344).

III

Statement of the Case

A

Petitioners were indicted by the Grand Jury of the County of Bronx at the February, 1947, Term of the County Court on February 11, 1947, for the crime of Murder in the First Degree, which indictment was filed in the office of the Clerk of the County of Bronx on the 11th day of February, 1947 (R. 5-7). Thereafter and on February 25, 1947, a motion was made by the District Attorney of the County of Bronx for an order that the issues be tried by a Special Jury. Said motion was granted after opposition by counsel for the petitioners (R. 13). On the 3rd day of March, 1947, in compliance with the order 150 names were drawn as a panel of Special Jurors from which a jury was to be selected to try the issues herein. A Challenge was made to the panel of Special Jurors on behalf of the petitioners on the grounds among others that:

1. Sec. 749-aa of the Judiciary Law of the State of New York is in violation of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States.

2. That qualified Negro jurors were improperly excluded from the list of Special Jurors from which said jury panel was drawn (R. 25-29).

Testimony was taken on the charges contained in the Challenge (R. 40-48), and at the conclusion thereof the Trial Court denied the Challenge to which petitioners' counsel excepted. On April 2, 1947, the jury returned with a verdict of guilty for each of the petitioners (R. 8). On April 14, 1947, the petitioners were sentenced to the punishment of death (R. 9-10).

IV

Specification of Errors

The trial Court erred in denying petitioners challenge to the special jury panel inasmuch as:

1. The trial of petitioners by a special jury as distinguished from a general, or ordinary jury, denied petitioners the equal protection of the laws guaranteed to them by the Fourteenth Amendment of the Federal Constitution, and the statute authorizing the empanelling of special juries (Judiciary Law, Sec. 749aa) is accordingly unconstitutional and void as applied to them.

2. Section 749aa of the Judiciary Law of the State of New York is unconstitutional and void as applied to petitioners in that it denied the petitioners the due process of law guaranteed to them by the Fourteenth Amendment of the Constitution of the United States. This statute sets forth no standard to guide those charged with the selection of special jurors and therefore enabled these officials in Bronx County to use the same list of approximately 800 special jurors in a county of 1,489,000 population, thereby denying to petitioners the equal protection of laws guaranteed to them by the Federal Constitution.

3. The trial of the petitioners by a jury from which qualified Negros were systematically, intentionally and deliberately excluded as such denied petitioners the equal pro-

tection of the laws guaranteed to them by the Fourteenth Amendment of the Federal Constitution.

V

ARGUMENT

Point I

Section 749aa of the Judiciary Law of the State of New York is unconstitutional and void as applied to the petitioners, in that it denies them the due process and equal protection of law guaranteed to them by Section I of the Fourteenth Amendment to the Constitution of the United States.

The petitioners were tried before a jury of Special Jurors pursuant to Section 749aa of the Judiciary Law of the State of New York.

The petitioners opposed the motion for an order for a panel of Special Jurors, which motion was returnable in Bronx County Court on the 21st day of February, 1947.

In addition thereto, before the commencement of the trial of said action the petitioners filed with the Court a written challenge to the Special Panel of Jurors, on the grounds (1) that the jury drawn pursuant to Section 749aa of the Judiciary Law is unconstitutional; (2) that qualified women jurors were improperly excluded from the Special Panel; (3) that qualified Negroes were improperly excluded from the Special Panel.

The Court took judicial notice of the fact that no Negroes were included in the Special Panel of 150 jurors for the trial of this action (R. 49).

The trial of the petitioners by a special jury has not only deprived them of their constitutional right to trial by a general jury, but has deprived them of the right to life

itself. The right to be tried by a general jury belonged to them, not because they were Negroes or members of any particular race or creed, but because they were citizens of the State of New York and of the United States, and because they were human beings. As such, they were entitled to all the respect and fair dealing that befits the dignity of man, a dignity that is recognized and guaranteed by the Constitution of the United States.

That respect and fair treatment, which is guaranteed by the Constitution of the United States to all human beings, was denied to the petitioners because they were not afforded the same treatment given to other defendants in criminal cases in the County Court of the County of Bronx who are tried by a general jury. Compelling the petitioners to go to trial before a special jury by virtue of Section 749aa of the Judiciary Law deprived them of equal protection under the law.

Year after year the special jury has been condemned by the bench, bar and lay community, because the special jury does not represent a cross section of the community and because the special jury is so constituted as to be convicting jury. In his message to the New York Legislature on January 14, 1941, former Governor Lehman vigorously urged the abolition of "blue ribbon" juries declaring them to be "at war with our basic concepts of a democratic society." He stated:

> "I recommend that blue ribbon juries be abolished. These special juries are used only in the Counties of New York, Bronx, Kings, Queens and Westchester. This in itself is untenable. There is no reason why special juries should be used in one part of the State and not in another—if the practice is sound.
>
> However, I do not believe the practice is sound. The use of special or so-called blue ribbon juries is not consonant with the preservation of the constitutional

right to a trial by a jury of peers. It is at war with our basic concepts of a democratic society.

It is well known that blue ribbon juries are chosen to be convicting juries. This is demonstrated by a special study made by the Judicial Council. This study clearly establishes that the percentage of convictions to acquittals is much higher in cases tried by special juries than in cases tried by ordinary juries. While blue ribbon jurors are taken from the ordinary jury list, unlike other jurors, they are given a personal interview by the Commissioner of Jurors. Thus, by a process of eliminating jurors who have previously served on blue ribbon juries which have ended in acquittal or disagreement, special juries are particularly selected to be convicting juries. To say the least, such a practice is inexcusable. That it exists is borne out by the facts.

It has been urged by prosecuting officials of the five counties affected that our ordinary juries are not of sufficiently high caliber. If that was ever true, it is not true today. Recently we have removed most jury exemptions and empowered women to serve on all juries. Many new administrative improvements have been adopted, particularly in New York County, and these same improvements are now being adopted in all other counties in New York City. Today it is more than ever unjust and unnecessary to select special juries in specific cases. Blue ribbon juries should be abolished."

Special panels, aptly called "Lord Jeffreys" juries, have been condemned by the Judicial Council of the State of New York in its Annual Reports from the Third to date. The Fourth Annual Report of the Judicial Council eloquently summarizes the reasons urged in its Annual Reports from the Third to the Thirteenth, the latest, for the abolition of special juries. In its Fourth Annual Report (Legislative

Document No. 48, 1938) the Judicial Council stated (pp. 46-48):

"ABOLITION OF SPECIAL JURIES

The Judicial Council has been attempting to improve the general jury system to such a point that extraordinary juries of any kind will no longer be necessary. To this end, the Council recommended women jurors, limitations on jury exemptions, and the abolition of struck, foreign and special juries, all of which recommendations were put into effect, except the abolition of special juries. Upon reconsideration and further study, the Council renews its recommendation for the abolition of special juries. These, popularly known as 'blue ribbon' juries, are confined to the Counties of New York, Bronx, Kings, Queens and Westchester.

The special jury, although designed to provide more intelligent and capable jurors in exceptional cases, both civil and criminal, does not necessarily bring about the desired result. The jurors composing it are chosen from the ordinary jury list. The only method of choice distinguishing special from ordinary jurors is a personal interview of each special juror with the Commissioner of Jurors. The questions put by the Commissioner of Jurors to the prospective special jurors to determine their eligibility are similar to those usually put to an ordinary juror by counsel.

A more serious charge than its uselessness has been levelled at the special jury. It has been suggested that, by a process of eliminating jurors who have previously served on a special jury which has ended in acquittal or disagreement, special juries are particularly chosen to be convicting juries. Data gathered by the Judicial Council on the use of special juries during the five year period July 1, 1932 to June 30, 1937, in the counties of New York, Bronx, Kings and Queens, indicate that special juries are prone to convict. During the period studied, of 383 defendants tried before special juries, 78 per cent were convicted and 22 per cent were acquitted. It should be noted that in the 383 cases, only

five defendants demanded a special jury. In all other cases, the application was made by the people.

To compare the special with the ordinary juries, a study was made of all homicide cases, except those involving negligence or automobiles, tried during 1933 and 1934. The percentage of convictions to acquittals was much higher in cases tried by Special juries than in cases tried by ordinary juries. During the calendar year 1933, of the 47 defendants tried for homicide before special juries 83 percent were convicted and 17 percent were acquitted. During the same period, of 156 defendants tried for offenses of the same grade by ordinary juries, 43 percent were convicted and 57 percent were acquitted. In 1934, of 72 defendants tried before special juries, 82 percent were convicted and 18 percent were acquitted, while of 191 tried by ordinary juries, 37 percent were convicted and 63 percent were acquitted (see Table II below).

It is significant also that the percentage of defendants pleading guilty to a lesser offense was much higher in cases to be tried before special juries than those to be tried by ordinary juries. In 1933, for example, 26 percent of 47 defendants to be tried before special juries and only 9 percent of the 156 defendants to be tried before ordinary juries pleaded guilty to a lesser offense. In 1934, 39 percent of 72 defendants and 2 percent of 191 defendants to be tried before special and ordinary juries respectively, pleaded guilty to lesser offenses. Thus, defendants to be tried before special juries seem to realize that their chances of complete acquittal are much less than if they were to be tried before ordinary juries.

The Judicial Council believes that every petit jury should be of uniformly high calibre and capable of giving a fair trial in all cases. To attain this goal, the ordinary jury, as now provided, may be in need of improvement. It is, however, unjust and should be unnecessary to select supposedly special juries in specific cases.

The tables of data from which the above information is taken follow:

I

Disposition of Criminal Cases in Which Special Juries Were Ordered in the Counties of New York, Bronx, Kings and Queens, July 1, 1932–June 30, 1937.

County	Defendants	Convicted offense charged	Convicted lesser offense	Pleaded guilty	Total convicted	Acquitted indictment dismissed, discharged from custody
New York	202	61	28	62	151	51
		30%	14%	31%	75%	25%
Bronx	43	20	1	16	37	6
		47%	2%	37%	86%	14%
Kings	103	45	17	23	85	18
		44%	17%	22%	83%	17%
Queens	35	5	7	14	26	9
		14%	20%	40%	74%	26%
Totals	383	131	53	115	299	84
		34%	14%	30%	78%	22%

II

Disposition of Homicide Cases Other Than Those Involving Negligence or Automobiles in the Counties of New York, Bronx, Kings and Queens, January 1–December 31, 1933 and January 1–December 31, 1934.

	Special Jury				Ordinary Jury*			
	1933		1934		1933		1934	
	No.	%	No.	%	No.	%	No.	%
Defendants	47	....	72	....	156	....	191	....
Convicted, offense charged	17	36%	15	21%	53	34%	67	35%
Convicted lesser offense	10	21%	16	22%				
Pleaded guilty to lesser offense	12	26%	28	39%	14	9%	4	2%
Total convicted	39	83%	59	82%	67	43%	71	37%
Acquitted, indictment dismissed, discharged from custody	8	17%	13	18%	89	57%	120	63%

* Figures obtained from Department of Correction."

The Judicial Council has not since its Fourth Annual Report published statistics to indicate the percentage convictions in special jury cases as compared to general jury

cases. However, its subsequent Annual Reports from the Fifth to the Thirteenth Annual Report, the latest, contain tables of the disposition of criminal cases in the County Courts of the City of New York covering a period from July 1, 1937 to June 30, 1946. A study of these tables reveals that between July 1, 1937 and June 30, 1946, in the County Court of Bronx County there were 285 convictions to 208 acquittals by jury, making a total of 493 cases disposed of by jury trial. Since this total represented convictions and acquittals both by general juries and special juries, it became necessary for the writers to search the records of the Clerk of the County Court of Bronx County to determine the number of convictions and the number of acquittals by special juries. The writers found that between July 1, 1937 and June 30, 1946, there were fifteen convictions and four acquittals by special juries.

Deducting 15, the number of convictions by special juries from 285, the total number of convictions by juries, both general and special, leaves 270 as the total number of convictions by general juries.

Deducting 4, the number of acquittals by special juries from 208, the total number of acquittals by juries both general and special, leaves 204 as the total number of acquittals by general juries. Expressed in percentages it can, therefore, be said that from July 1, 1937 to June 30, 1946, there were 79% of convictions by special juries as compared to 57% of convictions by general juries. This disparity in convictions as evidenced by the above percentages becomes important in that it proves that special juries continue to be convicting juries, and as such a trial of the petitioners by a special jury was a denial of their constitutional rights to equal protection and due process of law.

In the cases of Fay v. New York (No. 377) and Bove v. New York (No. 452) decided June 23, 1947 by the Supreme

Court of the United States and reported Supreme Court Law and ed. Advance Opinions 1946-47, Vol. 91—No. 17, this Court considered the constitutionality of special panels in the State of New York. In a five to four opinion Mr. Justice Jackson writing for the majority stated as follows (p. 1530):

> "If it were proved that in 1945 an inequality between the special jury's record of convictions and that of the ordinary jury continued as it was found by the Judicial Council to have prevailed in 1933-1934 some foundation would be laid for a claim of unequal treatment."

The Court further stated (p. 1531):

> "A state is not required to take all cases of offense to the same forum. But a discretion, even if vested in the court to shunt a defendant before a jury so chosen as greatly to lessen his chances while others accused of a like offense are tried by a jury so drawn as to be more favorable to them, would hardly be equal protection of the laws."

And further stated (p. 1531):

> "But a ratio of convictions so disparate, if it continued until 1945, might, in absence of explanation be taken to indicate that the special jury was, in contrast to its alternate, organized to convict. A defendant could complain of this inequality even if it were shown a special jury court never had convicted any defendant who did not deserve conviction."

The writers by a study of the reports of the Judicial Council from the Fifth to the Thirteenth Annual Report and by their independent investigation of the records of the Clerk of the Bronx County Court have shown that there continues to be a disproportionate ratio of convictions between special juries and general juries.

It can, therefore, be argued without contradiction that special juries remain convicting juries and the trial of the

petitoners by a special jury was a denial of equal protection and due process of law.

> "It has been said that the abolition of special juries will result in too great a loss of time at the trial of actions where the crime charged is punishable by death, by reason of the possible drawing of jurors opposed to capital punishment. This matter, however, has been taken into account under the revised jury system in section 597 of the Judiciary Law which reads as follows:
>
> Sec. 597. Juror with scruples against death penalty. No person shall be selected as a grand juror or as a trial juror in a criminal action where the crime charged is or may be punishable by death, who has stated to the county clerk in his examination under oath as required, that he has conscientious scruples against the death penalty and that such scruples would prevent him from returning an indictment, or returning a verdict of guilty, of murder in the first degree. Such scruple shall not, however, hinder the selection of such person to serve as a trial juror in any civil action or in any criminal action other than that specified above. (Added L. 1940, ch. 202, effective Sept. 1, 1940.)
>
> This section applies to all trial and grand jurors throughout New York City and was included specifically to save time in the examination of jurors by attorneys. It has proven successful in Richmond County, which has no special jurors." (1940 Reports, Memo No. 65, p. 169 of the Committee on Criminal Courts, Law and Procedure of the Association of the Bar of the City of New York.)

The testimony herein indicates that there are no special qualifications required by special jurors as distinguished from general jurors. General jurors, who are not opposed to capital punishment are qualified as special jurors. This is supported by the testimony of an employee of the Division of Jurors, Office of County Clerk, Bronx County, who

supervises the compiling of the list of special jurors (R. 42-43):

"Q. What are the requirements according to your office of a special juror? A. That they not be opposed to capital punishment.

Q. Is that the only requirement? A. That's the only one.

. . . . . .

Q. The only thing you are interested in when you accept him as a special juror is that he be not against punishment? A. Free of that; yes, sir."

The Trial Court, therefore, erred in denying petitioners challenge to the special jury panel inasmuch as the trial of the petitioners by a special jury as distinguished from a general, or ordinary jury, denied petitioners equal protection of the law guaranteed to them by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and the statute authorizing and impanelling special juries (Judicial Law, Section 749aa) is accordingly unconstitutional.

Point II

Section 749-aa of the Judiciary Law of the State of New York is unconstitutional and void as applied to petitioners in that it denied the petitioners the due process of law guaranteed to them by the Fourteenth Amendment of the Constitution of the United States. This Statute sets forth no standard to guide those charged with the selection of special jurors and therefore enabled these officials in Bronx County to use the same list of approximately 800 special jurors in a county of one million four hundred eighty-nine thousand population for nine years to the grave prejudice of the petitioners.

Section 749-aa of the Judiciary Law of the State of New York became effective on April 7th, 1938. In the year 1938,

pursuant to said section, approximately 800 jurors were selected as a panel of Special Jurors from which trial juries were drawn to try criminal cases.

From 1938 when they were selected to the present date, these 800 special jurors have been called upon from time to time to be trial jurors in criminal cases in which the District Attorney requested a trial by special jury.

This is supported by the testimony of William F. Fischer, a clerk in the Division of Jurors Office of the County Clerk of Bronx County, who supervises the compiling of the special jury list (R. 44).

> "Q. Who strikes out the names from the special jurors list? A. It is an office routine, an office mechanics. If a person moves from the county it is stricken off. If a person is deceased it is stricken off.
>
> Q. Do you keep the same names on the special juror panel from year to year? A. We do.
>
> Q. And do you keep a record of their service? A. We do.
>
> Q. And do you keep a record of their convictions? A. No, sir; that's something we wouldn't know."

In a County with a population of 1,489,000 (The World Almanac and Book of Facts for 1947, published by the New York World Telegram), the District Attorney has for the past nine years prosecuted criminal cases by special jury before the same 800 special jurors.

The Division of Jurors Office keeps a record of the service of these jurors (R. 44). The denial therefore of the Clerk from the Division of Jurors Office that no record is kept as to how these special jurors voted in specific cases in which they were trial jurors (R. 44), can be discounted in view of his statement that a record of their service is kept.

The District Attorney moves the trial of specific cases by a special jury. It therefore becomes a simple matter for

the Division of Jurors and the District Attorney to determine from the date when a special juror served, the specific case in which he served and whether a conviction or acquittal resulted.

The District Attorney therefore comes forearmed with a knowledge of the record of each special juror as to his vote for convictions in previous cases in which said special juror acted. It simplifies his task of selecting convicting special jurors in impaneling a special jury for a case on trial. No defendant or his counsel in Bronx County has the opportunity afforded the District Attorney of obtaining this information which is made available to the District Attorney because of the fact that the 800 special jurors have been the same for the past nine years.

These self-same special jurors appearing before the same District Attorney year after year cannot help but be impressed with the thought that they are a branch of the District Attorney's Office, and accounts for the high percentage of convictions by special jurors as compared to ordinary juries.

The Negro population of Bronx County in 1940 was 23,529 (U. S. Department of Commerce, 16th Census of the U. S. 1940). The most recent survey of the Negro population of Bronx County is 192,066 (letter dated, January 23, 1948, Mayor's Committee on Unity of New York City, Appendix D.).

This increase of 168,537 Negroes in Bronx County since 1940 has been given no recognition in so far as special jurors are concerned. The Division of Jurors of the County of Bronx continues to use the same special jurors of approximately 800, that it has been calling for special jury duty since 1938.

The petitioners herein were tried by a special jury selected from this panel of 800 jurors, who had nine years of service as special jurors.

To force these petitioners to be tried before a jury selected from a group that has been functioning for over nine years as special jurors to the exclusion of other citizens and peers of the petitioners, and whose only call to duty is when the District Attorney deems it expedient to try a case before them, is not a trial by a jury of their peers and violates the Constitution of the United States.

"A State is not required to take all cases of offense to the same forum, but a discretion, even if vested in the court to shunt a defendant before a jury so chosen as greatly to lessen his chances while others accused of a like offense are tried by a jury so drawn as to be more favorable to them, would hardly be equal protection of the laws." (*Fay v. New York supra.*)

Point III

The trial of the petitioners, Negroes, by a jury selected from a panel from which Negroes were systematically, intentionally and deliberately excluded, denied petitioners the equal protection of law and due process of law guaranteed them by the Constitution of the United States.

The Fourteenth Amendment in addition to due process and equal protection clauses, declares that "Congress shall have power to enforce, by appropriate legislation, the provisions of this Article." So empowered, the Congress on March 1, 1875, enacted that "no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States or of any State, on account of race, color, or previous condition of servitude" (March 1, 1875) 18 Stat. 336, 337, c114, 8 U. S. C. A. sec. 44, 2 F. C. A. title 8, sec. 44.

The Supreme Court of the United States has many times held that the deliberate and intentional exclusion of Negroes

from trial juries or grand juries, whether by State Statute or by action of State officials, violated the equal protection laws of the Fourteenth Amendment. *Strouder* v. *West Virginia*, 100 U. S. 325; *Carter* v. *Texas*, 177 U. S. 442; *Rogers* v. *Alabama*, 192 U. S. 226; *Norris* v. *Alabama*, 294 U. S. 587; *Hollins* v. *Oklahoma*, 295 U. S. 394; *Hale* v. *Kentucky*, 303 U. S. 613; *Pierre* v. *Louisiana*, 306 U. S. 354; *Smith* v. *Texas*, 311 U. S. 128; *Hill* v. *Texas*, 316 U. S. 400.

The Supreme Court held in these cases that the equal protection laws entitled Negro defendants to the chance, unaffected by any element of deliberate discrimination, of having Negroes on the juries which try them. Petitioners as Negroes and human beings endowed with all the rights specified in the Constitution can claim that no racial exclusion shall enter into the selection of any jury that tries them.

We are dealing here with a subtle and sophisticated form of discrimination which does not lend itself to easy or precise proof. Certainly the witness from the County Clerk's Office of Bronx County will not readily admit that Negroes are discriminated against in the selection of special jurors. However the facts eloquently evidence that there is such discrimination.

The testimony indicates that there is no way of ascertaining the number of Negroes on the special jury panel if any at all. (R. 43).

> "Q. How many special jurors are there in the County of Bronx? A. We have approximately 784 or 783. Q. Will your records indicate how many of the 784 are Negroes? A. No, sir. There is no way of determining that. A juror is a juror, white or black, race or creed, man or woman. Q. Will your records indicate how many of those are Negroes? A. No, sir."

William F. Fischer, a clerk in the Division of Jurors Office of the County Clerk of Bronx County, who supervises

the compiling of a special jury list hazarded a guess that of 500 Negro jurors examined for jury duty approximately twelve were selected as special jurors on a special jury panel of 783 or 784 (R. 45).

The Court took judicial notice of the fact that there were no Negro jurors on the special panel of 150 jurors from which the trial jury was drawn (R. 49).

It is impossible that chance or accident alone could have brought about the selection of so few Negroes from among the hundreds which it is alleged were examined. It is impossible that in a County with a total population of 1,489,000 (World Almanac and Book of Facts, 1947, published by New York World Telegram, Pg. 1912) and with a Negro population of 192,000 (letter dated January 23, 1948, Mayor's Committee on Unity of New York City, Appendix D), which Negro population comprises 13% of the total population of Bronx County, a mere handful if any at all were found to be qualified for special jury duty.

As was stated in *Smith* v. *Texas,* 311 U. S. 128 pages 130 and 131; "The fact that the written words of a state's laws hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires that equal protection to all must be given—not merely promised.

"Here, the Texas statutory scheme is not in itself unfair; it is capable of being carried out with no racial discrimination whatever. But by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to provide any group thought by the law's administrators to be undesirable. And from the record before us the conclusion is inescapable that it is the latter application that has prevailed in Harris County. Chance and accident alone could hardly have brought about the listing

for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service."

The Court further stated on page 132:

> "If there has been discrimination, whether accomplished ingeniously or ingenuously the conviction cannot stand."

Conclusion

The Judgment appealed from should be reversed.

Respectfully submitted,

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APPENDIX A

Section 749aa of the Judiciary Law of the State of New York

Sec. 749-aa. Special jurors in certain counties.

1. List of special jurors. The county clerk of each county of the state having a population of one million or more inhabitants, according to the last preceding federal census, shall select from the persons qualified to serve as trial jurors in such county such number of special jurors as the justices of the appellate division of the Supreme Court, or a majority of them of the department in which such county is situated shall, from time to time direct. The names of the persons so selected liable to serve as special jurors shall be entered in suitable books alphabetically arranged, with their places of business and the residence of each. Such county clerk, from time to time, may cancel such list and select other special jurors in their places. Persons who are selected as aforesaid by such clerk to act as special jurors shall be exempt from all other jury duty from and after the date of their selection, and they shall remain so exempt so long as they continue to be such special jurors.

2. Persons ineligible. No person shall be selected as such special juror who is by law disqualified or who claims and is allowed exemption from service as a trial juror, or who has been convicted of a criminal offense, or found guilty of fraud or other misconduct by the judgment of any civil court or who possesses such conscientious opinions with regard to the death penalty as would preclude his finding a defendant guilty if the crime charged be punishable with death, or who doubts his ability to lay aside an opinion or impression formed from newspaper reading or otherwise, or to render an impartial verdict upon the evidence, uninfluenced by any such opinion or impression, or whose opinion as to circumstantial evidence is such as would prevent his finding a verdict of guilty upon such evidence, or who avows such a prejudice against any particular defense to a criminal charge as would prevent his giving a fair and impartial trial upon the merits of such defense, or who

avows that he cannot in all cases give to a defendant who fails to testify as a witness in his own behalf the full benefit of the statutory provision that such defendant's neglect or refusal to testify as a witness in his own behalf shall not create any presumption against him.

3. Examination as to fitness; subpoena; punishment for disobedience. No person shall be selected as a special juror until he shall have been examined personally by the county clerk, his deputy or secretary as to his qualification and fitness to serve as a special juror. Such county clerk may issue a subpoena requiring any person within such county to attend before him, his deputy or secretary at a time specified for the purpose of testifying concerning the qualification or fitness of himself or any other person to serve as a special juror, and the propriety of the selection of such special juror. A person so subpoenaed must attend and testify accordingly. In case of his failure to attend and testify as required by such subpoena, or a refusal to be sworn, or to answer any legal or pertinent question, he shall be punished therefor by any justice of the supreme court as contempt of court. All of the provisions of sections four hundred four through four hundred fourteen of the civil practice act, sections twenty-five and twenty-six of the civil rights law, are made applicable to the enforcement of the provisions of this subsection, except that no fees are required to be paid to any person so subpoenaed. The county clerk, in the record made by him of the jurors selected as such special jurors, shall enter the age of each special juror so selected, his business or vocation; if any, the length of his residence in the state and county and, if naturalized, the date of his naturalization. Such record shal be a public record and shall be open to inspection.

4. Application for special jury. Whenever an issue of fact has arisen in any civil or criminal action triable in a county embraced within the provisions of this section, the district attorney, or the defendant, if in a criminal action, or either party in a civil action may apply for a special jury to try such issue. Such application may be made at any term of the supreme court appointed to be held within the county where such issue is triable, or at any term of any

other court of record in which court such issue is to be tried. It must be made upon the indictment, the plea thereto and an affidavit in a criminal action or the pleadings and affidavit in a civil action upon two days' notice to the adverse party or his attorney. Where, upon such application, it appears to the court that by reason of the importance or intricacy of the case, a special jury is required, or that the subject-matter of the indictment or the issue to be tried has been so widely commented upon that the court is satisfied that an ordinary jury cannot without delay and difficulty be obtained to try such issue, or that for any other reason the due, efficient and impartial administration of justice in the particular case would be advanced by the trial of such an issue by a special jury, the court to which the motion is made may make an order directing that such trial be had by a special jury, and such trial shall be had accordingly. The order must specify the time when the drawing of such special jury shall take place and the number of special jurors to be then drawn, the term of the court and particular day in the term when such special jury must attend. The day so specified for the attendance of the special jury must, except in the case of an order for additional special jurors drawn under subsection six of this section, be at least five days in addition to any Sunday, holiday or half holiday, after the day specified for the drawing of the special jury.

5. Drawing; notification of jurors. At the time specified in the order the special jury shall be drawn at the office of the county clerk as provided in section six hundred and two of this chapter. A minute of the drawing must be kept by the county clerk, or his deputy, which must be entitled in the action in which the jury is to serve specifying the term of court and the particular day in the term when the special jurors so drawn must attend; and there must be entered thereon the name of each juror drawn. Such minute must be signed by the judge or justice and by the county clerk, or his deputy, present at the drawing and such minute so signed must be filed in the office of such county clerk. Such county clerk must notify each juror therein named in the manner provided for trial jurors, except that provisions as to intervals of time with regard to the notification of trial

jurors shall not apply. Before the day specified for the attendance of the special jurors the county clerk must file with the clerk of the trial court, part or term at which the juror is required to attend, a certified copy of the minute with a return indorsed thereon or annexed thereto specifying the manner in which each juror was notified and the time and place of the service of such notice. Such return shall be presumptive evidence of the fact of such service. An affidavit of the person by whom such service shall have been made, stating the manner, time and place of such service shall accompany such return.

6. Additional jurors; drawing. If the panel of the special jurors thus drawn shall be exhausted before a jury is completed, or if the trial court shall be of the opinion that additional special jurors will probably be needed to complete the jury, the trial court may, from time to time, direct that such additional special jurors be drawn for the trial as it may deem expedient. The order must specify the number to be drawn, the time of the drawing and the time when such additional jurors shall be required and notified to attend. Such additional drawing shall be made by the same officers authorized to draw the special jurors, either in open court in the presence of the judge or justice presiding at the trial, or at the office of the county clerk as prescribed in such order, and shall be conducted in the same manner as the original drawing and a minute thereof kept and certified as prescribed for the original drawing, and the jurors so drawn shall be summoned in the same manner as those originally drawn.

7. Challenges; trial. The parties to such an action shall have the same number of peremptory challenges and the same challenges for cause to be tried in the same manner as upon a trial with an ordinary jury. The rulings of the trial court, however, in admitting or excluding evidence upon the trial of any challenge for actual bias shall not be the subject of exception. Such rulings and the allowance or disallowance of the challenge shall be final. Upon the formation of a special jury as hereinbefore provided the issue must be tried by such jury as prescribed by the code of criminal procedure or the civil practice act with respect

to a jury trial in a criminal or civil action with an ordinary jury.

8. Revision of list. In each county of the state to which this section applies, the names selected and composing the special jury list heretofore compiled, shall be the special jury list for such county subject to such revision thereof by striking therefrom and adding thereto the names of such jurors as from time to time the county clerk shall deem proper.

9. Appellate division to make rules. The justices of the appellate division of the supreme court of the department embracing the county in which such special jury list shall be constituted shall make such rules and regulations not inconsistent with the provisions of this section as shall be necessary to regulate the making of the application for a special jury under the provisions of this section for the drawing and attendance of such jurors and for the proper and efficient enforcement of the provisions of this section.

10. Violations of section or rules, penalty. Any violation of this section, or of such rules and regulations prescribed by the appellate division of the supreme court shall be deemed a contempt of court under section seven hundred fifty of the judiciary law and such rules and regulations may be enforced as if a violation thereof were such a contempt as provided by section seven hundred fifty-one of the judiciary law.

APPENDIX B

Further Provisions of the Judiciary Law of the State of New York Relating to Jurors in Bronx County

Sec. 590. County clerk to select, draw, summon and empanel jurors.

The county clerks of the counties included within a city having a population of one million or more shall select, draw, summon and empanel all jurors for all courts within their respective counties and shall decide upon their qualifications and exemptions, in the manner prescribed by this

article, article eighteen-B of the judiciary law, those sections of the code of criminal procedure regarding grand jurors, or the rules adopted pursuant thereto. But this section shall not operate to impair the right to challenge a particular juror at a trial.

Sec. 591. County jury board.

There shall be established for each county of a city having a population of one million or more a "county jury board" which shall consist of the presiding justice of the appellate division of the supreme court for the department embracing the county, or his designee from among the justices of the court, a justice of the supreme court residing in the county to be designated by the justices of the appellate division for the department embracing the county, one judge of the court of general sessions or of the county court residing in the county, to be designated by the justices of the appellate division of the department embracing the county, and the county clerk of the county. Such designations, except of the county clerk, shall be made in writing, filed in the office of the county clerk, and shall continue in effect until changed.

In the counties of New York and Bronx, the mayor of the city of New York shall also be a member of the county jury board.

The county jury board shall exercise the powers and duties in regard to the selection of grand jurors as prescribed by section two hundred and sixty-seven-aa of the code of criminal procedure.

The county clerk shall also consult with the county jury board in regard to the proper and efficient administration of the jury system.

Sec. 592. Appellate divisions to make rules.

The justices of the appellate divisions of the supreme court in the first and second judicial departments, or a majority of such justices, acting jointly, shall adopt and may from time to time amend and rescind rules not inconsistent with statute, to regulate the time, manner and practice of examining, selecting, drawing, summoning and em-

paneling jurors, and the number of each to be selected, drawn and empaneled in and for the several courts within the counties of a city having a population of one million or more, and in addition to regulate in any other respects the duties enjoined by law on the county clerks and on the county jury boards in such counties with respect to the administration of the jury system.

Sec. 593. Specific power and duties of county clerk.

The county clerk shall be an officer of all courts of record located in the county in which he acts and shall have authority to administer oaths or affirmations in relation to any matter relating to his duties under this article, article eighteen-B of the judiciary law, those sections of the code of criminal procedure regarding grand jurors or the rules adopted pursuant thereto.

He shall keep a record of all proceedings before him, or in his office.

He must furnish a copy of each paper filed or proceedings taken in his office, to any person applying therefor and paying the fees, except that answers, data and information obtained in interviewing and examining prospective jurors shall be considered confidential and shall not be disclosed except as permitted by the appellate divisions. The county clerk shall charge the same fees for furnishing copies of papers as the clerk of a court of record, and shall pay over all such fees to the treasurer of the city of New York.

The county clerk may designate from among the members of his staff, by a certificate filed in his office, any deputy or assistant to perform any of his duties with respect to jurors as required by law.

Whenever reference is made to the county clerk in this article, article eighteen-B of the judiciary law, those sections of the code of criminal procedure regarding grand jurors or the rules adopted pursuant thereto, such reference shall be deemed to apply also to deputies or assistants duly designated by him except where the contrary intent is plainly apparent from the context.

In accordance with the law and pursuant to the rules of the justices of the appellate division, each county clerk shall:

(1) make personal examination of individuals concerning their eligibility or the eligibility of others for jury service, and for that purpose to issue and enforce notices, mandates and subpoenas,

(2) hear and determine claims for exemption from jury service within the county,

(3) prepare ballots for qualified jurors,

(4) draw panels of jurors for regular and adjourned terms of court.

(5) notify and summon jurors drawn for service,

(6) take any steps necessary to bring about the punishment of those who violate the laws and rules relating to the drawing, selection, summoning and empaneling of jurors,

(7) consult with the county jury board as provided in section five hundred and ninety-one of this article, and

(8) do all things necessary and proper for the true execution of his powers and duties.

Sec. 594. Source of names.

The county clerk, in order to ascertain names of persons eligible as jurors, may consult the latest census enumeration, the latest published telephone or city directory, the records of the department of taxes and assessments, the voters' registry list and any other available sources.

Each public officer of a city having a population of one million or more shall upon request at all times furnish to the county clerk of the county in which such public officer acts, without charge, all information within his control to enable such county clerk to procure the names of persons eligible to serve as jurors, as well as information concerning a person's qualifications or lack of qualifications for jury service.

Sec. 595. Examination as to fitness; personal interviews; police records.

No person's name shall be entered on a jury list unless (a) he has been personally interviewed by the county clerk, (b) he has stated his qualifications under oath, (c) his name has been forwarded to the police department for checking against the records of that department and a report received or a reasonable time has elapsed without such a report, and (d) the county clerk, in the case of grand jurors, shall also have received a certificate of the central bureau of criminal identification, records and statistics from the state commissioner of correction in accordance with the provisions of section two hundred and sixty-seven-a of the code of criminal procedure.

Sec. 596. Qualifications of jurors.

In order to be qualified to serve as a juror in the counties included within a city having a population of one million or more, a person must: 1. Be a citizen of the United States, and a resident of the county.

2. Be not less than twenty-one, nor more than seventy years of age.

3. Be the owner, in his or her own right, of real or personal property of the value of two hundred and fifty dollars; or the husband of a woman or wife of a man who is the owner, in his or her own right, of real or personal property of that value.

4. Be in the possession of his natural faculties and not infirm or decrepit.

5. Not have been convicted of a felony or a misdemeanor involving moral turpitude.

6. Be intelligent; of sound mind and good character; well informed; able to read and write the English language understandingly.

A person dwelling or lodging or having or maintaining a dwelling or lodging in a county for the greater part of the time between October first and June Thirtieth next thereafter, is a resident of that county, within the meaning of this section.

Sec. 597. Juror with scruples against death penalty.

No person shall be selected as a grand juror or as a trial juror in a criminal action where the crime charged is or may be punishable by death, who has stated to the county clerk in his examination under oath as required, that he has conscientious scruples against the death penalty and that such scruples would prevent him from returning an indictment, or returning a verdict of guilty, of any crime punishable by death. Such scruple shall not, however, hinder the selection of such person to serve as a trial juror in any civil action or in any criminal action other than that specified above.

Sec. 598. Disqualifications.

Each of the following officers is disqualified to serve as a juror:

1. All elected members of the federal and state executive departments and of the executive department of any political subdivision of the state.

2. The comptroller; the attorney-general; the head of a department or the head and members of a board, council or commission which is the head of a civil department of the federal or state government, or of any political subdivision of the state; members of the state industrial board; members of the state tax commission; members of the state commission of correction; members of the public service and transit commissions; the commissioner of education; the commissioner of agriculture and market; the commissioner of social welfare and the deputy of each officer specified in this subdivision; the secretary to the governor.

3. A member of congress or of the legislature, or a member of the city council of the city of New York.

4. A judge of a court of record, or a surrogate.

5. A sheriff, under sheriff, or deputy sheriff, regularly engaged in the performance of his duties.

6. The clerk or deputy clerk of any court.

No public officer or employee of the United States government, or of any state, city or municipality, or of any

political subdivision of any of them, or of any official board, authority, council, commission, corporation, or other agency of any of them, shall serve on any grand jury. This prohibition shall not apply however, to any public officer serving without compensation, or for compensation of not to exceed one dollar a year, on any local, appeal or advisory board established under the selective service system of the United States pursuant to the provisions of the "Selective Training and Service Act of 1940," or any amendments thereof, nor shall it apply to those who are public officers or employees of the state solely by virtue of their membership in the New York guard pursuant to article two-A of the military law. For the duration of the war and for the period to which the annual grand jury list in effect at its termination shall be applicable this prohibition shall not apply to any public officer or employee mentioned in the first sentence of this paragraph who serves as such public officer or employee without compensation or for compensation not in excess of one hundred dollars per year.

Sec. 599. Exemptions.

Each of the following persons only, any inconsistent provision of law to the contrary notwithstanding, although qualified, is entitled to exemption from service as a juror upon claiming exemption therefrom: 1. A clergyman or minister of religion officiating as such and not following any other calling.

2. A practicing physician, surgeon, or dentist having patients requiring his daily professional attention, a licensed pharmacist actually engaged in his profession as a means of livelihood, a duly licensed embalmer actually engaged in his profession as a means of livelihood, and an optometrist actually engaged in the practice of optometry.

3. An attorney or counsellor at law regularly engaged in the practice of law as a means of livelihood.

4. A person belonging to the army, navy or marine corps of the United States, and the active national guard and naval militia of the state.

5. A member of a fire company or department or police force or department duly organized according to the laws

of the state of any political subdivision thereof and performing his duties therein; or an exempt volunteer fireman, as defined in section two hundred of the general municipal law.

6. A captain, engineer, or other officer, actually employed upon a vessel making regular trips; or a licensed pilot actually following that calling.

7. A woman.

8. An editor, editorial writer, a sub-editor, reporter or copy reader, actively and regularly employed in the handling or gathering of news for a daily, semi-weekly or weekly newspaper.

Sec. 600. Evidence of exemption.

The evidence of the right to exemption as prescribed in section five hundred and ninety-nine is as follows:

An affidavit of the applicant or of another person in his behalf satisfactory to the county clerk stating the facts entitling the applicant to exemption, or in the case of an exempt volunteer fireman, the certificate provided for in section two hundred and two of the general municipal law.

Each affidavit must be filed with the county clerk and must be kept open by him at all reasonable times to public inspection.

The right to exemption must be claimed at the time of examination for liability to serve as a juror, except that a workman may claim such right to exemption at any subsequent time. If a male fails to present such claim at such time, he shall be deemed to have waived the same and cannot be exempted thereafter except for reasons accruing after the time of examination. If, however, he claims exemption at the time of his examination and is not granted the same, he may present such claim for exemption to the court when drawn for jury service or may review such refusal in the manner provided by article seventy-eight of the civil practice act.

Sec. 601. Length of service of jurors and limitation on recurrence thereof.

The length of service of grand or trial jurors in any county included within a city having a population of one million or more shall be determined by rules adopted pursuant to this article.

A person who has served his term as a trial juror in any court within the state, including a federal court, unless he is engaged in the trial of an action or proceeding when his term expires, shall not be qualified to serve again as a trial juror in any court within any county included within a city having a population of one million or more for two years subsequent to the last day of his service.

A person who has served his term as a grand juror in any court, including a federal court, within any county included within a city having a population of one million or more, shall not be qualified to serve again as a grand juror or as a trial juror in any court within such county for one year subsequent to the last day of his service.

Nothing contained in this section shall invalidate a verdict returned by a trial jury or an indictment returned by a grand jury, even though such trial or grand jury includes one or more trial or grand jurors respectively not qualified by virtue of such previous service.

Sec. 602. Officers to attend drawing.

On a day designated by the county clerk, at least one judge of a court of record residing or sitting in the county, to be designated by the justices of the appellate division of the supreme court of the department embracing the respective counties, must supervise the proper drawing of jurors for terms of courts of record where issues are triable by a jury.

Sec. 603. County clerk to notify jurors.

The county clerk must notify each juror drawn for jury service by serving upon him a notice to that effect and specifying the place where and the time when he is required to attend. The notice may be served by mail, personally,

or by leaving it at the juror's residence or place of business with a person of suitable age and discretion.

Sec. 604. Excuses and postponements.

The judge of the trial court may, in his discretion, on the application of a trial juror, excuse him from a part or the whole of the time of service required of him as a juror or may postpone the time of service of a juror to a later day during the same or any subsequent term of the court.

A person who has been notified to attend and who applies to be excused as prescribed in this section must present the notice to the judge in open court. If he cannot personally attend he must send it by a person capable of making the necessary proof in relation to his claim to be excused.

A note of the excuse and of the reason therefor, attested by the judge, who must append his signature or initials thereto, must be made or endorsed upon the notice to attend; or, if the person notified has not brought it into court, upon a separate piece of paper which must be transmitted to the county clerk as part of the report specified by rule.

Sec. 605. Discharge by the court.

The court must discharge a person from serving as a trial juror in the following cases, where the causes justifying the discharge have arisen after examination for liability or where the person has claimed exemption at the time of examination and was refused: 1. Where it satisfactorily appears that he is not qualified;

2. Where it satisfactorily appears that he is disqualified;

3. Where it satisfactorily appears that he is exempt and he claims the benefit of the exemption.

Where a person is discharged for any of the causes specified in this section, the county clerk must destroy the ballot containing his name.

Sec. 606. Penalties.

A person who, in the manner set forth in article one hundred and sixteen of the penal law, shall hinder or obstruct the proper administration, or violate any of the provisions

of this article, of article eighteen-B of the judiciary law, of those sections of the code of criminal procedure regarding grand jurors, or the rules adopted pursuant thereto, shall be subject to the penalties provided in said article of the penal law.

Sec. 607. Trial jurors drawn for court of record to serve in other parts, terms or courts.

Trial jurors drawn for service in any court of record must serve as trial jurors in any other term or part of the same court when it sits in terms or parts, or, by consent of such court, in any other court of record sitting at the same time in the same courthouse. They may also so serve in any court of record sitting in the same county. When so serving in such other term, part or court their service shall be with the same power, force and effect as if they had been drawn as trial jurors for service in such other term, part or court.

Sec. 608. Sheriff's jurors.

The county clerk of each county in a city having a population of one million or more shall select annually from the persons qualified to act as trial jurors, the names of such number of persons as he deems necessary to constitute the sheriff's jurors for that year.

The county clerk shall draw and summon panels of sheriff's jurors, upon request of the sheriff.

APPENDIX C

Rules Relating to the Jury System in the City of New York

Pursuant to the provisions of section 502 of the Judiciary Law, as added by chapter 202 of the Laws of 1940, the justices of the Appellate Division of the Supreme Court in the First and Second Judicial Departments, acting jointly, do hereby adopt the following rules in relation to the jury system in the City of New York.

Part A Rules Relating to Jurors Generally

Rule I

Subpoenaing for Examination

No person shall be selected to serve as a juror unless the county clerk has passed upon his qualifications in accordance with the provisions of article seventeen of the Judiciary Law. For this purpose the county clerk may cause to be served upon any person in the county a subpoena requiring such person to appear before him for the purpose of testifying under oath as to the competency, qualifications and liability of himself or any other person to serve as a juror and to present claims for exemption or disqualification. Such person shall not be entitled to any fee or mileage. Such subpoena may be served personally or by leaving it at the person's residence or place of business with a person of suitable age and discretion, or by mail. If served personally or by substitution the subpoena shall require the person summoned to attend not less than three days after service. If served by mail the subpoena shall require the person summoned to attend not less than five days after the mailing thereof.

One or more successive subpoenas may be served upon the same person where he fails to attend as required by a former subpoena. Where a person has so attended twice and furnished all information required, he shall not be required to attend again for one year thereafter. But the county clerk may, in his discr ion, dispense with the personal attendance of the person so notified where another

person cognizant of the facts is produced and testified in his stead and it appears from the testimony of such other person that the person notified is disqualified, not qualified or exempt.

Rule II

Examination—Questionnaires—Index Cards or Books

Every person appearing for examination as a juror shall be required to fill out, in his own hand, sign and swear to, a written questionnaire. Each questionnaire shall be contained on a card or other paper of a size convenient for handling and shall be in the form prescribed by rule seventeen.

In addition to the questionnaire there shall be made out for each person appearing for examination an index card containing the name of said person, whether he has qualified for jury service or whether he is disqualified, has been rejected, or is otherwise not liable for service, whether he has been chosen for the grand, special or sheriff's jury, and such other information as may be deemed desirable by the county clerk and which may be conveniently inserted on the card. These cards shall be filed alphabetically according to the last name of the person regardless of whether or not he is liable for jury service. They shall be keyed to the questionnaires and shall constitute an index of all persons appearing before the county clerk for qualification as jurors. They shall be kept, if possible, in a visible index file.

A county clerk, instead of using index cards, may keep the required information in properly indexed books. In such event, whenever index cards are referred to in these rules, the reference shall be deemed to include such books.

After the person has filled out the questionnaire he shall be personally interviewed, under oath, by the county clerk.

After the person's examination is concluded and he is found otherwise qualified, his name shall be forwarded to the police department for checking against the records of that department, subject to the provisions of section five hundred ninety-five of the Judiciary Law.

Upon the basis of the questionnaire, the personal interview and the check against the police records, the county clerk shall decide whether the person interviewed is qualified to serve as a juror. In accordance with the decision he shall note on each questionnaire in a prominent place whether the person has been accepted, or found disqualified, not qualified or granted exemption, the reason shall be noted. Where jurors are not qualified, the reason therefor may be indicated by appropriate language or by the symbols R1, R2, R3, R4, R5 and R6 representing the six subdivisions of section five hundred ninety-six of the Judiciary Law. Likewise, exemptions may be indicated by appropriate language or by the symbols E1, E2, E3, E4, E5, E6 and E7 representing the seven subdivisions of section five hundred ninety-nine of the Judiciary Law, and disqualifications may be indicated by appropriate language or by the symbols D1, D2, D3, D4, D5 and D6 representing the six subdivisions of section five hundred and ninety-eight of the Judiciary Law.

There shall be continuous search for persons qualified and liable for jury service, in order to obtain as many prospective jurors as possible and to limit as much as possible repetition of jury service. Before subpoenaing persons for examination, the county clerk shall check their names against the index cards of names of persons previously examined in the county clerk's office.

Rule III

Filing Questionnaires

The questionnaires of persons accepted and the questionnaires of persons rejected shall be filed separately, each in alphabetical order. Whenever any person qualified for jury service becomes exempt or disqualified for reasons accruing since his examination, his questionnaire shall be marked accordingly and transferred to the inactive file. The index card of such person shall also be marked accordingly.

The questionnaires of persons who shall be or shall have become disqualified for jury service because of age or who shall have died shall be kept at least for one year thereafter.

The questionnaires of persons selected to serve as grand, special or sheriff's jurors shall be filed as separate categories, each in alphabetical order. Whenever any person has completed the period for which he has been selected to be a member of the grand, special or sheriff's jury, his questionnaire shall be returned to the file of general trial jurors.

Rule IV

Notification of Acceptance as Juror

After a person has qualified satisfactorily for service as a juror, the county clerk may, in his discretion, issue a notice to such person, informing him that he has been found qualified to serve as a juror and that he will be notified when he has been drawn for actual service. The notice shall also request such person to inform the county clerk if he becomes entitled to exemption and claims such exemption or becomes disqualified at any time after his examination, and shall also request him to inform the county clerk of changes in address or occupation and of any other information which is thought desirable.

Rule V

Preparation of Ballots—General Ballot Box

The county clerk shall prepare a ballot for each person as soon as such person has qualified for jury service. The ballot shall contain the name, occupation, address and number of the juror and such other information as the county clerk deems necessary. The ballots shall be kept in a box, to be known as the general ballot box and shall be retained in the office of the county clerk and shall be kept securely locked and sealed except at the time of authorized drawings when it shall be opened in the presence of the judge supervising the drawing and after the drawing shall be again sealed in the presence of said judge. Such general ballot box is to be constructed cylindrical in form with an aperture large enough only to admit conveniently the hand of the person by whom the ballots are to be drawn.

the aperture to be provided with a cover so arranged as to be conveniently locked and sealed when closed.

At the time of each authorized drawing the ballots made out since the last drawing shall be placed in the general ballot box after the drawing of jurors is completed, or during the course thereof if the box becomes empty, and before the box is again sealed.

All jurors except grand, special and sheriff's jurors shall be drawn from the said general ballot box.

In lieu of the foregoing, the county clerk for Bronx County or for New York County may at his option keep all ballots, except for those persons on a grand, special or sheriff's jury list, in a securely locked, sealed receptacle in the county clerk's office. Such receptacle, may be opened only in order that the ballots may be checked and revised or additional ballots added thereto or, in preparation for an authorized drawing, to transfer ballots therefrom into a wheel constructed as set forth in this rule. Such receptacle may only be opened for such purposes in the presence of and under the supervision of one of the judges designated by the justices of the Appellate Division pursuant to section six hundred and two of the Judiciary Law after due notification to attend pursuant to rule six. If this optional method has been followed, such receptacle or wheel, whichever shall be appropriate, shall be deemed to be referred to in these rules whenever the phrase "general ballot box" is used.

Rule VI

Notice to Judges

At least three days before a drawing the county clerk must notify in writing the judge or judges of courts of record designated by the Justices of the Appellate Division, to attend at his office on a day designated by him, not more than forty nor less than fourteen days before the day appointed for holding a term of court at which issues are triable by a jury, in order to supervise the proper drawing of trial jurors for that term.

A dawing shall be held if one of such judges shall be present on the designated day; otherwise, the county clerk must again notify such judge or judges. Where it is necessary to renotify a judge or judges of a drawing, such notification may be oral and a reasonable period of time shall be given.

Rule VII

Mode of Drawing

The drawing must be conducted as follows:

1. The county clerk must shake the box or turn the wheel containing the ballots so as to mix them thoroughly.

2. He must then, without seeing the name contained on any ballot, publicly draw the ballots out of the box until the requisite number has been drawn.

3. As each ballot is drawn from the general ballot box, it may be checked against the index cards or questionnaires or a list prepared by the county clerk and if it is noted thereof that:

(a) The person whose name appears on the ballot is not liable or qualified for jury service for cause accruing since his examination, or that

(b) the person whose name appears on the ballot has been placed on the grand jury list, the special jury list or the sheriff's jury list the ballot shall be destroyed forthwith or may be set aside and retained in a separate receptacle for not more than two months, such ballots being marked with the reason for such disposition.

4. As each ballot is drawn consideration may, in the county clerk's discretion, be given to the time of year when the juror would prefer to serve.

5. The minute of the drawing must be kept by one of the attending officers who must enter therein the name contained in each ballot drawn, the number assigned, to each ballot drawn, and specify for what court and for what time or part each was drawn. The minute of each drawing shall be signed by the county clerk and the attending offi-

ers, and filed in the county clerk's office, where it shall e open to inspection.

6. Approved ballots drawn from the general ballot box hall be placed in separate receptacles according to the ourts for which they are drawn and shall be kept in such eceptacles until the adjournment of the part or term for hich they are drawn and shall then be disposed of in ccordance with the provisions of rule fifteen as set forth elow.

7. When assigning jurors who have been drawn for ervice in a district of the Municipal Court of the City of ew York in a borough which does not have a central jury art, consideration shall be given to the residence or the lace of business of such jurors in order that they shall ot be unduly inconvenienced.

Rule VIII

Number of Trial Jurors To Be Drawn

The county clerk shall draw for each term and each eparate part of a term of a court of record at which issues f fact are triable by a jury, such number of trial jurors s he believes necessary and sufficient, unless otherwise pecified by general order of the court or by a written rder of the judge appointed to hold the part or term. Where, in pursuance of the provisions of rule seven, it is ecessary to set aside ballots drawn from the general ballot ox, the ballots so set aside shall not be considered as part f the number required to be drawn.

Rule IX

Special Jurors—Ballots and Drawing

The county clerk shall prepare ballots for every name n the special jury list in the same manner as for trial urors and shall deposit them in a receptacle to be known s the special jury ballot box which shall be retained in he office of the county clerk and shall be kept securely ocked and sealed except at the time of authorized drawings.

The drawings of special jurors shall be conducted in he manner prescribed by law for drawing trial jurors.

A minute of such drawing shall be kept, signed and filed in the same manner as for the trial jurors.

This rule shall apply except where inconsistent with statute or rule adopted pursuant to section seven hundred forty-nine-aa of the Judiciary Law.

Rule X

Sheriff's Jurors—Ballots and Drawing

The county clerk shall prepare ballots for every name on the sheriff's jury list in the same manner as for trial jurors, and shall deposit them in a receptacle to be known as the sheriff's jury ballot box which shall be retained in the office of the county clerk and shall be kept securely locked and sealed except at the time of authorized drawings.

The drawings of sheriff's jurors shall be conducted in the manner prescribed for trial jurors.

A minute of such drawings shall be kept, signed and filed in the same manner as for trial jurors.

Rule XI

Length and Time of Service of Trial Jurors

Trial jurors drawn for a term or a part of a term of any court of record in the Counties of New York and the Bronx shall serve only for two weeks or half a term. Trial jurors drawn for a term or a part of a term or terms of any court of record in the Counties of Kings, Queens and Richmond shall serve for a period not exceeding two weeks or half a term, unless a majority of the Justices of the Appellate Division in the Second Department make an order directing otherwise as to the jurors for any court or term of any court. Such jury service shall, however, continue beyond said periods until the conclusion of any trial on which the jurors may be engaged.

Subject to the above, the county clerk in each county may designate the dates when periods of jury service shall commence.

Rule XII

Notification of Jurors

The county clerk must notify each juror named in the minute of trial jurors drawn to attend the term or the part for which he was drawn by serving upon him a notice, addressed to him, stating that he has been drawn as a trial juror for, and is required to attend, the term or the part specified in the notice on the days specified therein. The notice may contain copies of such portions of article seventeen of the Judiciary Law of sections seven hundred and fifty and seven hundred and fifty-one of the Judiciary Law, and of article one hundred and sixteen of the Penal Law, as he deems advisable.

The notice may be served personally or by leaving it at the juror's residence or place of business or employment with a person of suitable age and discretion at least six days before the beginning of the term or the part for which the juror is drawn. Such notice may also be served by mail if mailed at least nine days before the day appointed for such juror to appear, in which case said notice shall be enclosed in a securely closed postpaid wrapper, addressed to such juror at his residence or place of business or employment and properly posted. If the notice is mailed and is returned by the post office undelivered, it may be remailed to the same address or any other address for the juror which the county clerk may have, not less than two days, exclusive of Sundays or holidays before the day appointed for such juror to appear.

Rule XIII

County Clerk to Notify Court Clerk

Before the commencement of the term or part the county clerk must file with the clerk of the court for which jurors are drawn a certified copy of the minute of the drawing, with a return under his hand, indorsed thereupon or annexed thereto, naming each person notified, the time for which he was notified to appear and the time, place and manner of service. Such return shall be presumptive evi-

dence of the fact of such service. An affidavit of the person by whom each service shall have been made, stating the manner, time and place of such service, shall accompany such return.

Rule XIV

Report by Court Clerk after Conclusion of Service of Jurors

The clerk of each court for which trial jurors have been drawn shall, within ten days after the close of each term of service of jurors or after the discharge of the jurors if they are discharged before the close of their term of service, file with the county clerk the certified copy of the minute of the drawing of jurors received from the county clerk before the beginning of the term and the county clerk's return thereto, or a copy of such paper certified by the clerk; together with each notice or other paper attested by a judge in regard to the excusing of jurors. The clerk must also deliver to the county clerk therewith his certificate specifying distinctly and in detail as follows:

1. The name and residence of each juror who attended and served; the number of days the juror attended for the purpose of serving; and the number of days he actually served.

2. The name and residence of each juror who was excused, discharged, exempted or declared disqualified by a judge of the court together with any affidavit, certificate or other document or paper submitted by the juror at the time that he was excused, discharged, exempted or declared disqualified.

3. The name and residence of each person notified who did not attend or serve.

4. The name and residence of any person found guilty of contempt of court and the penatly, if any.

The above papers must be filed in the office of the county clerk and shall not be altered or corrected except in pursuance of an order of the court.

Rule XV

Proceeding Subsequent to Return of Court Clerk's Certificate—Replenishing General Ballot Box

Upon receipt by the county clerk of the certificate of the court clerk, the information therein contained shall be entered on the record of service of each person named. The proper notations shall also be made on the index cards of the persons named. If the person has become disqualified or exempt or a nonresident or has died, the ballot shall be destroyed forthwith or may be set aside and retained in a separate receptacle for not more than two months, such ballots being marked with the reason for such disposition, and the questionnaire transferred to the inactive file. There must be entered on the questionnaire the reason why the ballot was so disposed of.

The other ballots shall be disposed of as follows:

1. Ballots of persons excused shall be kept out of the general ballot box for the period during which excused and shall then be returned to the general ballot box after the necessary clerical notations have been made.

2. Ballots of persons who have been excused to, or whose time of service has been postponed to some future time, shall be kept apart until such future date at which time they shall be deposited in a separate ballot box. When a drawing of jurors is held for such time, jurors shall first be drawn from such box.

3. Ballots of persons who appeared for service and served for at least five days shall be placed in special receptacles dated according to the month and year when they last served in order to assure their not being required to serve again within two years after appearance for their last service and shall be kept out of the general ballot box until that time, when they shall be returned to the general ballot box.

Rule XVI

Additional Jurors

At any time during the sitting of a term of a court i the county, the court may direct an additional number o trial jurors to be drawn for the term or for the part a which the order is made. The order must specify the num ber of jurors to be drawn and the time of drawing. Th drawing shall be held in the office of the county clerk in th manner provided for regular trial jurors, except that notic is not required.

The county clerk must forthwith notify the additiona jurors thus drawn by such a notice as the court directs to attend the term or part at the time specified in the order The county clerk must forthwith file with the clerk of th court for which additional jurors were drawn a return under his hand, naming each person notified as prescribed above and specifying in each case the manner, time and place of the service of such notice. Such return shall be presumptive evidence of the fact of such service. An affidavit of the person by whom the service shall have been made, stating the manner, time and place of such service shall accompany such return.

Rule XVII.

Form of Questionnaire

The questionnaire to be filled out by prospective jurors shall contain the following information and shall be in such form as the county clerk may prescribe:

Qualifications to Serve as Juror

State of New York, County of ss.:

Date Result By Whom Examined

(Do not write in this box)

The undersigned, being duly sworn, makes the following answers. (Explanations or remarks concerning answers may be made in ruled box on reverse side):

1. Print name in full .....
First name

.....
Middle name Last name

Married Single Widower
Divorced Separated No. of Children

2. Date of birth (Month day year)
Color Color hair Color eyes
Wear glasses Distinguishing physical characteristics Weight Height

3. Residence Apt. No. Tel. No.

4. Are you the tenant if not, with whom do you live How long living at present address How long in N. Y. State In County

5. Former residences for past six years

6. Give any other name you have used or been known by Did you register at last election
Where did you live then

7. Place of Birth (City State)
If not American born, how became citizen
When naturalized Where

8. Education: Primary, High School, College, Degrees, special studies, etc.

9. Occupation Employed at present
Business Address Tel. No.

10. Firm name of employer How long in present employment

11. What other employment during past six years

12. Wife's name Her occupation
Her firm Her business address

13. Do you or your wife own property (such as bank account, furniture, insurance, trust funds, stocks, bonds, mortgages, land, etc.) worth $250
Describe property

14. Are you employed on a Federal, State or City Public Works Project Are you on relief
Ever served as a juror
In what court and when did you last serve

15. Ever been denied listing as a qualified juror or been stricken from any list of jurors
Where and why

16. Are you physically disabled or incapacitated
Is your hearing or eyesight so impaired that you could not intelligently follow a case in court
Ever confined to a State or Private Institution

17. If your answer to any question on line 16 is "yes," give all particulars

18. Ever arrested or indicted on a criminal charge
Ever convicted
Have you ever had any trouble with the authorities
This includes a violation of a traffic ordinance, or statute or any other ordinance

Any judgment ever been entered against you in a civil court on allegations of fraud or misconduct

19. Any judgments outstanding against you
Nature of actions in which obtained

20. Have you ever been in bankruptcy or made a general assignment for the benefit of creditors
Have you conscientious scruples against the death penalty which would preclude you from finding a defendant guilty if the crime charged be punishable by death

21. Have you such opinions as would prevent a verdict of guilty in a criminal case upon circumstantial evidence

Do you doubt your ability to lay aside opinions or impressions, the result of newspaper reading or hearsay, and render an impartial verdict upon the evidence

22. Are you aware of any prejudice against any State law which would prevent a finding of guilty for violating such law. Have you such a prejudice against any particular defense to a criminal charge as would prevent your finding a fair and impartial verdict upon its merits.

23. By law the failure of a defendant in a criminal case to testify is not considered as any evidence of his guilt. Would you give a defendant the benefit of this law. What months of the year between October 1 and June 30 would you prefer to serve (Name at least two months).

24. Is there anything which would influence you as a juror, as affecting any person, or class of persons because of nationality, sex, color, race, religion, wealth, occupation, political affiliation, social or economic belief or any other reason.

Sworn to before me this — day of ——, 19—.
The foregoing answers are true in all respects.

Sign Here .....

Month Service Preferred. Cap. Pun.
Name Residence Occupation Business Address Date of Birth
1 2 3 4 5 6 7 8 9 10 11 12 Yes No. AJ SJ PJ ShJ

(Reverse side of Questionnaire).

STATE OF NEW YORK,
County of ——, ss:

—— ——, being duly sworn, deposes and says: I do not dwell or lodge in the County of —— for the greater part of the time between the first day of October and the thirtieth day of June next thereafter, and I am not a resident of said County; but I reside permanently at ——, City of —, County of ——, State of ——, and have resided there since ——.

—— ——.

Sworn to before me this —— day of ——
19—.

—— ——.
Deputy County Clerk.

STATE OF NEW YORK,
County of ——, ss:

—— ——, being duly sworn, deposes and says: I am entitled to and claim exemption; I am disqualified; from doing jury service for the following reason

—— ——.

Sworn to before me this —— day of ——
19—.

—— ——.
Deputy County Clerk.

Explanations of any answers on opposite side of this form, or remarks, may be made here.

(ruled box)

RECORD OF JURY SERVICE

Date Placed in Wheel	Term Drawn	Court	Days in Attendance	Days Served: Days Actually Served	Days Served: If excused Reason

CHANGES OF ADDRESS

Business Address
Residence

PART C—RULE OF CONSTRUCTION

Rule XXX

Rule of Construction

Whenever a word of masculine gender is used in these rules, it shall be understood to apply to female as well as male jurors.

APPENDIX D

Mayor's Committee on Unity
of New York City

Municipal Building, Room 705, Brooklyn 2, New York

TRiangle 5-7100, Ext. 290-295

Dr. Dan W. Dodson, Executive Director.
Edith M. Alexander, Bernard Lander, Schuyler N. Warren, Associate Directors.

Committee: Charles E. Hughes, Jr., Chairman; Mrs. Sidney C. Borg, Mendor T. Brunetti, Edmond Borgia Butler, Rt. Rev. Msgr. Raymond J. Campion, Justice Charles S. Colden, Thomas B. Dyett, Dr. William R. R. Granger, Fannie Hurst, Dr. John H. Johnson, Justice Edward Lazansky, Howard McSpedon, Christopher C. Mollenhauer, Michael M. Nisselson, Justice Nathan D. Perlman, Timothy N. Pfeiffer, Ruth S. Shoup, Dr. John A. Singleton, David Sher.

January 23, 1948

Mr. I. Saul Fleischman, 160 Broadway, New York 7, New York.

DEAR MR. FLEISCHMAN:

We are acknowledging your letter of January 20th. We have not made any survey or estimate of the Negro population of the Bronx County, but on the most authoritative official City sources, the most recent estimate of the Negro population of the Bronx is as follows:

Precinct	Population
40	1,361
42	90,000
44	50
48	26,000
41	72,113
43	500

Precinct	Population
45	0
46	200
47	1,770
50	50
52	22

Sincerely yours,

BERNARD LANDER,
Associate Director.

BL:am.

(4513)